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3  
4 No. 48621-1-II  
5 COURT OF APPEALS, DIVISION TWO  
6 OF THE STATE OF WASHINGTON

7  
8 Skamania County Superior Court nos.  
9 13-1-00073-1

10 STATE OF WASHINGTON,  
11 Respondent

12 vs.

13 DEANNA ALLEN HAYES,  
14 Appellant

15 BRIEF OF RESPONDENT  
16  
17  
18

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**I. FACTS**

Deanna Allen Hayes, the appellant, was charged in Skamania County Superior Court, by information on August 29, 2013, with the crimes of Residential Burglary, Trafficking in Stolen property in the First Degree and Theft in the Third Degree. The appellant was convicted after jury trial on December 15, 2015 of Trafficking in Stolen Property in the First Degree.

The Court heard the following testimony. Dave Cox, while functioning as Undersheriff for the Skamania Count Sheriff's Office, responded to a report of a Burglary at Eldon Schalk's residence in Underwood Washington on August 16, 2013. (RP 12/14/2015 at 28-29). Undersheriff Cox testified that Eldon Shalk reported he had been out of town from August 5, 2013 through August 12, 2013. (RP 12/15/2015 at 29). Undersheriff Cox observed at the Schalk home a skylight vent where the screen had been ripped off. In looking on the outside of the home Undersheriff Cox observed scuffs in the oxidation on the metal roof, consistent with someone walking on the roof, that lead to the skylight (RP 12/15/2015 at 30). Undersheriff Cox testified that he saw many items in the Shalk home of value that could have been readily taken, but the only reported stolen item was the gold nugget and chain which had been located in the Master Bedroom. (RP 12/15/2015 at 29). Eldon Schalk testified that he and his wife had been out of town on a road trip, when the burglary occurred, and when he returned he discovered his gold nugget and chain, which were kept in a jewelry box in his bedroom, were missing

1 This item was the only item missing (RP 12/14/2015 at 48 - 49). Mr.  
2 Schalk also testified that he discovered a skylight door which was open  
3 and the screen had been broken when he returned from his road trip which  
4 caused him to believe that a burglary had occurred. (RP 12/14/2015 at  
5 51). Mr. Schalk testified that the Gold Nugget was a gift his wife had  
6 made by a local jeweler and the chain, that was attached to the nugget, was  
7 a five foot long chain which had belong to his mother (RP 12/15/2015 at  
8 50-51). Mr. Schalk testified that he had mentioned he would be out of  
9 town to his son and the appellant, who were in a dating relationship, 2 or 3  
10 days prior to leaving (RP 12/14/2015 at 49). Mr. Schalk further testified  
11 that his son and the appellant had lived at his home prior to the burglary  
12 but he had them removed by the Sheriff's Office. (RP 12/15/2015 at 46-  
13 48). Deputy Chadd Nolan, of the Skamania County Sheriff's Office  
14 testified that on August 9, 2015 he responded to a suspicious persons call  
15 in Underwood, Washington on Cook-Underwood Road near Lacock-  
16 Kelchner. Deputy Nolan testified that he traveled to that location and  
17 located and identified the appellant and Mr. Schalk's son walking on the  
18 road in the dark and rain in an unpopulated area. (RP 12/15/2015 at 66-  
19 67). Undersheriff Cox testified that the area where Dep. Nolan contacted  
20 the appellant and Mr. Schalk's son was approximately one-half to one-  
21 quarter mile from the scene of the burglary and in a very rural area. (RP  
22 12/15/2015 at 70). Sergeant Tim Garrity of the Skamania County  
23 Sheriff's Office testified that he accessed the RAPID system, an electronic  
24 pawn monitoring system maintained by the Portland Police Bureau, at the

1 direction of undersheriff Cox. (RP 12/15/2015 at 63). Sgt. Garrity  
2 testified that he did a name search and received a positive hit on the  
3 appellant at a A-1 Pawn in Portland. (RP 12/15/2015 at 64-65). Sgt.  
4 Garrity testified that the information in RAPID showed a a pawn  
5 transaction by the appellant at a-1 pawn for a pendant charm or jewelry on  
6 August 26, 2013 (RP 12/15/2015 at 65). Undersheriff Cox testified that  
7 he traveled to A-1 hawk pawn shop in Portland Oregon, based upon Sgt.  
8 Garrity's results. Undersheriff Cox testified that he viewed video from the  
9 store security system of the transaction that the appellant was involved in  
10 and recognized both the appellant and Mr. Schalk's son in the video. (RP  
11 12/15/2015 at 30-37). Undersheriff Cox testified he recovered the gold  
12 nugget which had been stolen from Eldon Schalk, as well as transaction  
13 paperwork from A-1 Hawk. (RP 12/15/2015 at 38). Eldon Schalk  
14 identified the gold nugget recovered as the nugget which was stolen. (RP  
15 12/15/2015 at 50). Kevin Miller, the General Manager of A-1 Hawk pawn  
16 shop testified that the appellant came to A-1 Hawk and sold the gold  
17 nugget on August 26, 2015. Mr. Miller testified that the appellant  
18 provided a Washington Driver's License as photo ID and signed the  
19 transaction sheet a "Deanna Allen Hayes". Mr. Miller testified that the  
20 appellant indicated, on the declaration of ownership form, she had found  
21 the gold nugget as well as had been gifted the nugget back in 2012 in  
22 Astoria Oregon by the Tom Schalk, the son of Eldon Schalk. (RP  
23 12/15/2015 T53-59). The State admitted samples of the appellant's  
24 signature in the form of certified DOL record (RP 12/15/201 at 41),

1 Certified court record from the underlying proceeding (RP 12/15/2015 at  
2 42-42), and the Declaration of ownership form completed at A-1 pawn  
3 (RP 12/15/2016 at 54-56).

4 **II. APPELLANT'S ASSIGNMENT OF ERROR**

- 5 1. The evidence presented at trial does not support conviction for  
6 Trafficking in Stolen property in the First Degree under a  
7 sufficiency of the evidence analysis.  
8 2. The trial court failed to give oral notification on the loss of firearm  
9 rights as required.

10 **III. RESPONSE TO APPELLANT'S CLAIMS**

- 11 1. The evidence presented at trial is sufficient to establish a rational  
12 trier of fact could have found beyond a reasonable doubt that the  
13 appellant committed the crime of Burglary in the Second Degree.  
14 2. The record does not reflect an oral notification as required by  
15 RCW 9A.04.047(1)(a).

16 **IV. ARGUMENT**

17 1. Sufficiency of the Evidence

18 The court reviews the question of sufficiency of the evidence to  
19 determine "whether any rational trier of fact could have found the  
20 elements of the crime beyond a reasonable doubt." State v. McKague, 172  
21 Wn.2d 802, 805, 262 P.3d 1225 (2011). The court should assume the truth  
22 of the state's evidence, State v. Mines, 163 Wn.2d 387, 391, 179 P.3d 835  
23 (2008), view reasonable inferences from the evidence in the light most  
24 favorable to the state, id., and deem circumstantial and direct evidence

equally reliable, State v. Myers, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997).

Pursuant to WPIC 77.32 Trafficking in Stolen Property—First Degree—Knowingly Trafficking in Stolen Property—Elements the state would need to prove the following elements beyond a reasonable doubt to convict the defendant:

- (1) That on or between August 5, 2013 and August 26, 2013, the defendant knowingly trafficked in stolen property;**
- (2) That the defendant knew the property was stolen; and**
- (3) That this act occurred in the State of Washington.**

Pursuant to WPIC 77.35 Traffic has the following definition(s):

**“Traffic” means:**

**to possess stolen property, with intent to sell transfer distribute dispense or otherwise dispose of the property to another person**

Pursuant to WPIC 10.02 Knowingly has the following definition(s):

**A person knows or acts knowingly or with knowledge with respect to a fact circumstance or result when he or she is aware of that fact circumstance or result. It is not necessary that the person know that the fact circumstance or result is defined by law as being unlawful or an element of a crime.**

**If a person has information that would lead a reasonable person in the same situation to believe that a fact exists, the jury is permitted but not required to find that he or she acted with knowledge of that fact.**

1       **When acting knowingly is required to establish an element of a crime,**  
2       **the element is also established if a person acts intentionally.**

3               Pursuant to WPIC 10.51 Accomplice has the following definition:

4       **A person is guilty of a crime if it is committed by the conduct of**  
5       **another person for which he or she is legally accountable. A person is**  
6       **legally accountable for the conduct of another person when he or she**  
7       **is an accomplice of such other person in the commission of the crime.**  
8       **A person is an accomplice in the commission of a crime if, with**  
9       **knowledge that it will promote or facilitate the commission of the**  
10       **crime, he or she either:**

- 11       **(1) solicits, commands, encourages, or requests another person to**  
12       **commit the crime; or**  
13       **(2) aids or agrees to aid another person in planning or committing the**  
14       **crime.**

15       **The word “aid” means all assistance whether given by words, acts,**  
16       **encouragement, support, or presence. A person who is present at the**  
17       **scene and ready to assist by his or her presence is aiding in the**  
18       **commission of the crime. However, more than mere presence and**  
19       **knowledge of the criminal activity of another must be shown to**  
20       **establish that a person present is an accomplice.**

21               Pursuant to WPIC 77.36 Trafficking in stolen property, possession  
22       as the following definition(s):

23       **Possession means having property in one's custody or control. It may**  
24       **be either actual or constructive. Actual possession occurs when the**



1 property is in the actual physical custody of the person charged with  
2 trafficking. Constructive possession occurs when there is no actual  
3 physical possession but there is dominion and control over the  
4 property.

5 Proximity alone without proof of dominion and control is insufficient  
6 to establish constructive possession. Dominion and control need not be  
7 exclusive to support a finding of constructive possession.

8 In deciding whether the defendant had dominion and control over  
9 property, you are to consider all the relevant circumstances in the  
10 case. Factors that you may consider, among others, include whether  
11 the defendant had the immediate ability to take actual possession of  
12 the property, whether the defendant had the capacity to exclude  
13 others from possession of the property. No single one of these factors  
14 necessarily controls your decision.

15 At trial there was testimony that there had been an unlawful entry  
16 into the Schalk home via a skylight which was damaged at the time of the  
17 entry. The damaged skylight and the fact that the Gold Nugget and Chain  
18 were missing was discovered upon Mr. Schalk's return from his road trip  
19 where he had been gone from August 5, 2013 to August 12, 2013. The  
20 only items missing were the very specific items of jewelry that had family  
21 significance located in a jewelry box in the master bedroom of the home.  
22 No other items were taken although Undersheriff Cox observed many  
23 things of value that would have been taken. A reasonable inference from  
24 the nature of this burglary is that the person(s) that entered the home had

1 an intimate understanding as to it's layout and contents and had a clear  
2 idea of what they were seeking. The appellant and mr. Schalk's son would  
3 reasonably have had that knowlege based upon their prior residing in the  
4 home and the relationship with Eldon Schalk. The appellant and Mr.  
5 Schalk's son had the ability to enter into the home as they were contacted  
6 on August 9, 2013, during the period that Mr. Schalk was on his road trip,  
7 and identified, only one-half to one-quarter mile from the location of the  
8 burglary, walking in the dark and rain in this very rural part of the county.  
9 The appellant and Mr. Schalk's son were aware that the home would be  
10 left empty at that time. The appellant and Mr. Schalk's son were no  
11 longer living at the Schalk home as they had been removed prior by law  
12 enforcement. Subsequently, on August 26, 2013, just 13 days after the  
13 report of the burglary, the appellant sold the stolen Gold Nugget at A-1  
14 Hawk pawn shop in Portland Oregon. The appellant and Mr. Schalk's son  
15 were seen in video making the transaction and the appellant used her  
16 Washington driver's license to identify herself for the transaction. The  
17 appellant further signed a declaration of ownership claiming that the  
18 nugget sold was either found or gifted back in 2012 in Astoria, OR. The  
19 appellant's divergent explanation of ownership and the timeline given  
20 allow a reasonable inference of knowledge of the stolen nature of the  
21 Golden Nugget and an attempt to hide it's source. The jury had before  
22 them samples of the appellant's signature from the declaration of  
23 ownership, her DOL record, and court documents in the underlying matter.

24 Undersheriff Cox was able to recover the Gold Nugget from the

1 transaction and it was identified by Eldon Schalk as the Gold Nugget  
2 taken from the Jewelry Box in his bedroom.

3 The evidence, when construed in a light most favorable to the  
4 state, where the truth of the evidence is presumed, and direct and  
5 circumstantial evidence is deemed equally reliable, creates a compelling  
6 fact pattern establishing a basis to infer that the appellant was intimately  
7 involved in the unlawful entry into the Schalk home and the very specific  
8 theft of the Gold nugget and Chain and the subsequent sale of the Gold  
9 Nugget, just days after the Burglary at a Pawn shop in Portland, Oregon,  
10 demonstrating the intent of stealing this particular item of jewelry was to  
11 subsequently sell it for ready cash. The jury was instructed that the  
12 appellant could be culpable under a theory of accomplice liability if they  
13 did not believe she personally entered the home. The nature of the  
14 burglary and the joined at the hip involvement of the appellant and Mr.  
15 Schalk's son from the Theft to the Sale form a solid basis for a finding of  
16 guilt.

17 The evidence presented at trial form a valid basis for a rational trier  
18 of fact to find beyond a reasonable doubt that the appellant committed the  
19 crime of Trafficking in Stolen Property in the First Degree.

20 2. Oral notice of Loss of Firearm Rights


21 RCW 9.47.047(1)(a) requires a convicting court to notify orally  
22 and in writing a that person may not possess firearms until the right is  
23 restored by a court of record upon conviction of a felony. The record does  
24 not reflect that the notification was given orally, although there is written

1 notification in the Judgement and Sentence which has been signed by the  
2 appellant. If the court does not find this sufficient the state agrees the  
3 matter should be remanded for oral notification of loss of firearm rights  
4 pursuant to the term of the judgment and Sentence entered in the  
5 underlying matter.

6 **V. CONCLUSION**

7 The state respectfully submits that the evidence elicited at trial forms a  
8 firm basis for a rational trier of fact to find beyond a reasonable doubt that  
9 the appellant committed the crime of Trafficking in Stolen property in the  
10 First Degree. Further, if the written notice of firearm rights be deemed  
11 insufficient the matter be remanded for proceedings to give oral  
12 notification of loss of firearm right pursuant to the terms of the judgment  
13 and sentence filed in the underlying matter..

14 RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of NOVEMBER, 2016.

15  
16   
17 DANIEL C. MCGILL, WSBA#39129  
18 Skamania County Deputy Prosecuting Attorney

## SKAMANIA COUNTY PROSECUTOR

**November 14, 2016 - 2:13 PM**

### Transmittal Letter

Document Uploaded: 7-486211-Respondent's Brief.pdf

Case Name: State of Washington vs. Deanna Allen Hayes

Court of Appeals Case Number: 48621-1

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### The document being Filed is:

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Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

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Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

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Personal Restraint Petition (PRP)

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Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

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